

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

2 BIG LEGACY, LLC, 2 BIG HOLDINGS,)
LLC, 5 STAR PROPERTY GROUP, LLC,)
FLIPPERATI, LLC, STANDING)
OVATION RENOVATIONS, LLC,)
THE ATLANTA INVESTARS, LLC, AND)
YENOM ACQUISITIONS, LLC,)
ALVAREZ INVESTMENT GROUP,)

Plaintiffs,)

v.)

CL-CH RESIDENTIAL CREDIT OPS 2,)
LLC, ALPHAFLOW TRANSITIONAL)
MORTGAGE TRUST 2021-WL1,)
WILMINGTON SAVINGS FUND)
SOCIETY, FSB, as Trustee for Residential)
Mortgage Aggregation Trust, NYMT)
COMMERCIAL ACQUISITION, LLC,)

Defendants.)

COMPLAINT FOR WRONGFUL FORECLOSURE

COME NOW Plaintiffs 2 Big Legacy, LLC, 2 Big Holdings, LLC, 5 Star Property Group, LLC, Flipperati, LLC, Standing Ovation Renovations, LLC, The Atlanta Investars, LLC, Yenom Acquisitions, LLC and Alvarez Investment Group (collectively referred to as “Plaintiffs”), by and through their undersigned counsel and show this Court the following:

PRELIMINARY STATEMENT

Plaintiffs executed certain Deeds to Secure Debt for multiple properties located within the State of Georgia in the following counties: Walton, Clarke, Richmond, DeKalb and Fulton. After defaulting on payments, the assignees of the debt issued notices of foreclosure. Prior to the foreclosure sale of the properties, scheduled for November 1, 2022, Plaintiffs requested a payoff, which Defendants failed to provide in whole or in part for the properties. Subsequently, Defendants proceeded with the scheduled foreclosure sales on the properties despite failing to allow Plaintiffs to payoff the debt owed per Georgia law.

JURISDICTION AND VENUE

Jurisdiction over this action is conferred upon this Court by 28 U.S.C. 1332. Venue properly lies with this District pursuant to 28 U.S.C. 1391(b).

PARTIES

I. Plaintiffs.

Plaintiffs are all limited liability companies registered to conduct business within the State of Georgia, and are authorized to bring this action.

Plaintiff Alvarez Investment Group is a company registered to conduct business within the State of Georgia and is authorized to bring this action.

II. Defendants.

Defendant CL-CH Residential Credit Ops 2, LLC is a limited liability company registered to conduct business with the State of Delaware.

Defendant Alpha Flow Transitional Mortgage Trust 2021-WL1 is a business registered to conduct business with the State of New York.

Defendant NYMT Commercial Acquisition, LLC is a limited liability company registered to conduct business with the State of Delaware.

FACTUAL BACKGROUND

1.

On or about August 9, 2021, Plaintiffs executed a Promissory Note and Deed to Secure Debt in the amount of \$2,730,000.00 for certain properties located in Walton County, Clarke County, Richmond County, DeKalb County and Fulton County. A list of each property is attached as Exhibit “1”.

2.

In or around August 2022, Plaintiffs became behind in payments pursuant to the Deeds to Secure Debt and were issued Notices of Default (the “Notices”) by Defendants.

3.

The Notices included a scheduled foreclosure sale on the properties for September 6, 2022.

4.

On or about September 6, 2022, before the commencement of the scheduled foreclosure sale, Plaintiffs filed petitions for Chapter 11 bankruptcy in the United States Bankruptcy Court for the Northern District of Georgia.

5.

Due to Plaintiffs' filings, Defendants cancelled the foreclosure sale of the properties for September 6, 2022.

6.

In or around early September 2022, Plaintiffs secured funding to refinance the properties and requested a payoff of the loan from Defendants' attorney.

7.

On or about September 27, 2022, Plaintiffs obtained funding from a different source, which the funds were wired to pay off the loans held by Defendants.

8.

On or about September 30, 2022, Defendants issued notices to Plaintiff for a scheduled foreclosure sale of the properties on November 1, 2022.

9.

Plaintiffs requested a payoff from Defendants multiple times throughout October 2022, but Defendants failed to provide a payoff in violation of 15 U.S. Code Section 1639(g).

10.

On or about October 22, 2022, Defendants indicated that the pay-off provided was only for a portion of the properties and that the “investor plans to hold the others [properties] for their purposes.”

11.

The properties were subsequently sold at foreclosure sale on November 1, 2022, and Defendants recorded the relevant Deed Under Powers in deed book of records in the Counties where the properties are located.

CLAIMS FOR RELIEF

COUNT I **WRONGFUL FORECLOSURE**

12.

Plaintiffs incorporate all of the above paragraphs as if they were fully set forth verbatim.

13.

Defendants owed a duty to Plaintiffs and breached this duty to Plaintiffs by failing to provide a payoff within a reasonable time for Plaintiffs to redeem the Properties.

14.

The foreclosures resulted in financial harm to Plaintiffs and the loss of multiple Properties.

15.

If the Properties were not sold to a third-party bona fide purchaser for value, then the Court should award the Plaintiffs the fair market value of the Properties, plus exemplary damages of treble the amount per statute.

16.

That if the Properties remain in the names of Defendants, then in lieu of money damages, the court should vacate the Deed Under Powers issued to Defendants, and grant title in favor of Plaintiffs in the Properties which are the subject of this action and whose addresses are listed in Exhibit “2”.

17.

Plaintiffs are entitled to a judgment for damages three times the amount of the mortgages, the return of Plaintiffs’ Properties, costs, fees, and any other relief just and proper.

COUNT II
DECLARATORY RELIEF

18.

Plaintiffs incorporate all of the above paragraphs as if they were fully set forth verbatim.

19.

This Court has jurisdiction to declare rights and other legal relations of any interested party petitioning for such declaration.

20.

A controversy exists as to Plaintiffs' rights, titles, and interests in the Properties that causes uncertainty and insecurity to Plaintiffs.

21.

Plaintiffs are entitled to declaratory relief confirming their superior legal title to and right to possess the Properties, unencumbered by any claim or interest by Defendants.

22.

Plaintiffs pray that this Court declare that the foreclosure sales were commenced in violation of Georgia law.

23.

Plaintiffs pray that this Court declare the foreclosure sales void due to Defendants' failure to provide a payoff within a reasonable time pursuant to Federal law.

COUNT III
SLANDER OF TITLE

24.

Plaintiffs incorporate all of the above paragraphs as if they were fully set forth verbatim.

25.

Defendants uttered and published false claims of ownership of the Properties.

26.

Defendants continue to knowingly claim their false ownership of the Properties.

27.

Defendants are liable to Plaintiffs for interference of enjoyment of the Properties.

28.

Plaintiffs suffered damages as a result of Defendants' interference and are entitled to damages, costs, fees, and other relief just and proper.

COUNT IV
BREACH OF CONTRACT

29.

Plaintiffs incorporate all of the above paragraphs as if they were fully set forth verbatim.

30.

Plaintiffs and Defendants entered into multiple contracts for the Properties, which stated in pertinent part, "...upon default by Borrower...demand for sale and of written notice of default and election to cause to be sold the Property, which notice Lender shall cause to be filed for record."

31.

Defendants breached said contracts by failing to provide a condition precedent before commencing foreclosure proceedings in that Defendants did not cause to be filed for record a default notice.

32.

As a result of Defendants failure to adhere to the terms of the contracts, Plaintiffs have been damaged and are entitled to damages, costs, fees and other relief just and proper.

COUNT V
BREACH OF DUTY OF GOOD FAITH AND FAIR DEALING

33.

Plaintiffs incorporate all of the above paragraphs as if they were fully set forth verbatim.

34.

The Notes and Security Deeds entered into between the Plaintiffs and Defendants for the Properties were contracts.

35.

Plaintiffs had a reasonable expectation that Defendants would provide proper notice under the Security Deeds of any defaults and the notices required prior to any foreclosure sales.

36.

Defendants breached that reasonable expectation by their actions by failing to provide notice of defaults to be filed of record for the Properties.

37.

As a result of Defendants' breach of their duty of good faith and fair dealing, Plaintiffs are entitled to damages which include three times the amount of the mortgage, cost, fees and any other relief just and proper.

COUNT VI
PUNITIVE DAMAGES

38.

Plaintiffs incorporate all of the above paragraphs as if they were fully set forth verbatim.

39.

Pursuant to O.C.G.A. § 51-12-5.1, Defendants' actions in failing to provide a payoff as required by 15 U.S. Code § 1639(g) and wrongfully foreclosing on Plaintiffs' Properties shows willful misconduct, malice, fraud, wantonness, oppression and the entire want of care which would raise the presumption of conscious indifference to the consequences.

40.

As a direct and proximate result of Defendants actions, Plaintiffs are entitled to recover punitive damages in an amount to be determined at trial, but no less that \$2 million.

COUNT VII
ATTORNEY'S FEES

41.

Plaintiffs incorporate all of the above paragraphs as if they were fully set forth verbatim.

42.

Defendants have acted in bad faith, have been stubbornly litigious, and have caused Plaintiff unnecessary trouble and expense. Consequently, pursuant to O.C.G.A. § 13-6-11 and O.C.G.A. § 9-15-4, Plaintiff should be awarded his expenses of litigation, including attorney's fees, in an amount to be determined at trial.

REQUEST FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that this Court:

- a. Process issue and Defendants be served as provided by law;
- b. That Plaintiffs have a judgment against Defendants in an amount to be added later by amendment or shown at the trial of this case, plus interest accruing thereon at the maximum legal rate;

- c. That the Court declare that the foreclosure sale executed on November 1, 2022 be reversed due to violations of Georgia, Federal law and the Notes and Security Deeds;
- d. That Plaintiff recover from Defendants punitive, exemplary, treble, special and other appropriate damages in an amount to be determined at trial;
- e. That Plaintiff be awarded his costs of litigation and investigation of this matter, including reasonable and necessary attorney's fees and expenses of litigation, in an amount to be determined at trial, pursuant to, among other authority, O.C.G.A. § 13-6-11 and O.C.G.A. § 9-15-14;
- f. Pre-judgment and post judgment interest;
- g. Order such other and further relief as the Court deems equitable and just.

Respectfully submitted this 14th day of July, 2023.

THE BREEDLOVE LAW FIRM, LLC

/s/MARIO D. BREEDLOVE

MARIO D. BREEDLOVE

Georgia Bar No. 079229

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4412 Castellon Way Augusta, Ga 30906
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4422 Castellon Way Augusta, Ga 30906
4424 Castellon Way Augusta, Ga 30906
4426 Castellon Way Augusta, Ga 30906
4430 Castellon Way Augusta, Ga 30906
1026 Wheel House Lane B, Monroe GA 30655
4285 Valencia Lane Augusta, GA 30906
4291 Valencia Lane Augusta, GA 30906
4293 Valencia Lane Augusta GA 30906
4295 Valencia Lane Augusta GA 30906
1017 Wheel House Lane D Monroe, GA 30655
1026 Wheel House Lane A, Monroe GA 30566
4898 Pinnacle Drive Stone Mountain, GA 30088
4389 East Barcelona Way Augusta, GA 30906
4391 East Barcelona Way Augusta, GA 30906
4393 East Barcelona Way Augusta, GA 30906
4279 Valencia Lane Augusta, GA 30906
4283 Valencia Lane Augusta GA 30906
1017 Units A/B Wheel House Lane Monroe GA 30655
1017 Wheel House Lane C Monroe GA 30655
926 Units C/D/E/F
941 Units A/B
944 Units A/B Old Mill Point Monroe GA 30655
829 Units C/E
838 Units A/B/C/D
842 Units A/B
845 Units A/B Store House Court Monroe GA 30655
4861 Pinnacle Drive Stone Mountain, GA 30088
4866 Pinnacle Drive Stone Mountain, GA 30088
4879 Pinnacle Drive Stone Mountain, GA 30088
725 Unit A
728 Units A/B
736 Units A/B
739 Units A/B
747 Units A/B
750 A/B Wheel House Lane Monroe GA 30655
1002 Units A/B

1005 Units A/B/C/D Mill Creek Way Monroe GA 30655
829 Unit B
833 Units A/B Store House Court Monroe GA 30655
623 Units A/B
625 Units A/B
626 Units A/B
627 Units A/B
629 Unit A
630 Units A/B
632 Units A/B Mill Stone Bluff Monroe, GA 30655
725 Unit B
729 Units A/B
733 Units A/B Wheel House Lane Monroe GA 30655
1006 Units A/B Mill Creek Way Monroe GA 30655
1047 Wheel House Lane B Monroe GA 30655
1050 Wheel House Lane A Monroe GA 30655
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1026 Wheel House Lane F Monroe GA 30655
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